IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2938 OF 2006

Kusum J. Bhatia. ...Petitioner.
Vs.
D. J. Doshi Gurukul English Medium
High School & Ors. ...Respondents.
....
Mr. N.M. Ganguli for the Petitioner.
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CORAM : DR.D.Y.CHANDRACHUD, J.

November 27, 2006.

P.C.

In the decision in **Ahmedabad Pvt. Primary Teachers' Association vs. Administrative Officer**,[1] the Supreme Court held that teachers do not answer the description of being employees who are skilled, semi-skilled or unskilled within the meaning of Section 2(e) of the Payment of Gratuity Act, 1972. While concluding the judgment, the Supreme Court observed that there are already in several States separate statutes, rules and regulations granting gratuity benefits to teachers in educational institutions which are more or less beneficial than the gratuity benefits provided under the Act. The Supreme Court held that it

1 2004 AIR SCW 356

was for the Legislature to take cognizance of the situation of such teachers in various establishments where gratuity benefits are not available and think of a separate legislation. The Supreme Court, however, clarified that, that is a subject matter solely for the Legislature to consider and decide.

In so far as the facts of the present case are concerned, the Appellate Authority under the Payment of Gratuity Act was correct in allowing the appeal and setting aside the order of the Controlling Authority inasmuch as the Petitioner being a teacher, would not be entitled to the benefit of Gratuity under the Payment of Gratuity Act, 1972. The alternate case of the Petitioner is that despite the observations contained in para 26 of the judgment of the Supreme Court in the **Ahmedabad Pvt. Primary Teachers' Association** case, no steps have been taken by the State Legislature to enact legislation. It is a settled principle of law that a Writ of Mandamus cannot be issued by the High Court under Article 226 of the Constitution to the competent Legislature either to enact the legislation or to bring into force legislation already enacted. Hence, the submission of Counsel appearing on behalf of the Petitioner in that regard cannot be accepted.

However, while disposing of the petition, it would be appropriate if a copy of this order as well as of the judgment of the Supreme Court in the **Ahmedabad Pvt. Primary Teachers' Association** case is directed to be served on the Principal Secretary in the Department of Education of the State Government so as to enable the authorities concerned to be alive to the problem faced by a large number of teachers who have superannuated and who will superannuate in the future. The State Government may consider what steps should be taken in the light of the observations contained in para 26 of the judgment of the Supreme Court. The petition is accordingly disposed of.

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